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FEDERAL COMMUNICATIONS COMMISSION
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Before the
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
| | ) | |
| Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 Rate Regulation | ) ) ) ) | MM Docket 92-266 |

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COMMENTS OF ENGLE BROADCASTING

BENCHMARK RATES
AND
LEASED CHANNEL ACCESS

I operate television station W08CC in Southern New Jersey. We are the only VHF television station that is licensed to and serves Southern New Jersey. W08CC went on the air in January of 1989. Since its sign-on we have operated this station as if it was under all the obligations of Part 73 of the Commission Rules. We have operated on a 24 hour basis with a mixture of local programs, syndicated programs, and satellite delivered programs. We have produced and aired programs of local interest and importance, controversial issues, local sporting events, and viewer interactive talk and game shows. We have given many mayors in our service area their first appearance on broadcast television.

Local news has always been in the forefront of priorities for W08CC. Unfortunately, because of the enormous expense, we have been forced to curtail our local news efforts. The main reason why progress has been slow in developing our news operation is the fact that we have been unable to gain carriage on the cable systems in our service area. Without cable carriage the business community will not support our station and consequently our local newscasts. The need for our station here in Southern New Jersey



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is particularly important because of the lack of coverage by and lack of importance to the Philadelphia television stations.

Since we went on the air we have found it increasingly more difficult to reach the people we are licensed to serve. Our signal reaches six Southern New Jersey counties with a population of over a million and a half people. Cable TV penetration is 70%. There are six major Cable TV companies that serve Southern New Jersey. Garden State Cable and Storer Cable both owned by Comcast, control 58% of the Cable television market in Southern New Jersey.

We have tried in vain to gain cable carriage throughout our service area. Cable operators view us as unwelcome competition for advertising dollars. We have tried several incentive initiatives with cable operators with no success. We have tried leasing a channel under the Rules for Leased Channel Access. We requested a reasonable rate (according to the Rules) and all operators responded with rates so high the number one station in the market could not afford to pay. Also the rates for systems owned and operated by the same company bore no relationship to system size nor economic viability. In fact, one local manager told me the rates were set so high so that no one would be able to afford to lease a channel.

Carriage on local cable systems is vitally important to any television station. In many cases today, cable is the only conduit into the viewer's home. Many or most cable subscribers either do not replace old antennas or actually remove their antennas when they subscribe to cable. In fact, one cable operator is encouraging subscribers to remove their antennas with a monetary incentive. Comcast Cable based in Philadelphia, PA engaged in an aggressive media campaign to entice new subscribers to sell their outdoor or indoor antennas for $50.00. New subscribers were encouraged to turn in the rabbit ear type antenna that came with their television set. Those cable subscribers are now unable to receive off-air television signals without incurring the additional expense of purchasing a new antenna. Congress determined that A/B switches were impractical.

Every cable company in Southern New Jersey, except Sammons Communications, has way to get <u>some</u> cable carriage, without it there we would not be able to operate. If this same deal were struck with the remaining cable companies, it would be impossible for this station to exist. If this high outlay continues long term, this too will jeopardize the life of my station.

Shortly after going on the air in January 1989, I requested carriage for my station on most of the cable systems in South Jersey. Garden State Cable, based in Cherry Hill, NJ, (then NYT Cable) said they did not have channel capacity to accommodate us. They have subsequently added 15 new channels, all cable services. Jones Intercable said our programming was much like what they already had on their system and would not be interested in carrying W08CC. In a conversation with an other cable manager, Storer Cable of Woodbury, also said they did not have room, and have also added more channels; more cable services. The balance of the other cable systems in Southern New Jersey also cited no channel capacity, yet have all since added more cable services.

After an arduous year of lobbying cable companies for carriage, and motivating thousands of South Jersey residents to contact their cable companies and ask for W08CC, we realized the futility of asking for carriage. We saw then, and we still believe now, that the cable operators would not stop their anti competitive practices without governmental intervention.

We had no other choice but to request a Commercial Lease Channel under the terms and conditions of Section 612 of the 1984 Cable Television Act. The following a is brief synopsis of the results of our requests for lease access at a "**reasonable rate**".

1. On March 8, 1990, I sent a letter to Garden State Cable (Comcast) requesting Commercial Lease and rate as per Sec. 612. On March 30, 1990, Garden State Cable (Comcast) notified me the rate would be **<u>$225.00 per hour or $3, 942,000.00 per year.</u>** Garden State Cable has 170,000 subscribers

2. On March 8, 1990, I sent a letter to Jones Intercable requesting Commercial Lease and rates per Sec. 612. After many phone calls and letters, Jones Intercable finally responded. They quoted me **<u>$10.00 per subscriber per year, or $270,000 per year.</u>** Jones has 27,000 subscribers

3. On March 8, 1990, I sent a letter to Storer Cable for their Woodbury, NJ and Willingboro, NJ systems requesting Commercial Lease and rates per Sec. 612. Both systems are owned by Comcast. On March 30, 1990, Comcast quoted me a rate for Storer in Woodbury of **<u>$250.00 per hour or $2,190,000.00 per year.</u>** The Woodbury system has 28,000 subscribers. Comcast also quoted me a rate for Willingboro of **<u>$200.00 per hour or $1,752,000.00 per year.</u>** The Willingboro system has 29,000 subscribers.

As you can see, within the Comcast owned systems, there is no uniformity in the rates, other than to quote a rate so high that neither I nor any other station could afford it. In fact, the manager of Storer Woodbury, Kevin Smith, in a telephone conversation after I asked him why is the rate so high, he said "because we know that no TV station including yours could ever afford to pay that amount." These rates were simply designed to exclude television stations from Leased Commercial Access because of competition. Jones Intercable seems to have a policy regarding carriage of television stations that in

It is now in your hands to carry out Congress' directive so that these types of abuses are not continued by the cable companies.

network affiliate.

We suggest a more equitable way of calculating the maximum Lease Channel Rate. We suggest the Lease Channel Rate should be based on similar programming on the cable system and the anticipated cable viewer audience. Under Section 612 of the 1984 Communications Act the cable operator is allowed to look at the type of lease programming to determine a rate.

The rate would be computed by multiplying the amount the cable subscriber pays for the basic tier by the percentage of audience share for similar channels in the same program category (or if the video programmer has measured audience levels, those figures would be used).

Under this proposed method, a local video programmer such as a LPTV station that would probably not get more than 1 or 2 percent audience share would not have to pay a percentage rate that would be attributed to a higher viewed lease channel. This would allow a more diverse usage of lease channel access.

BENCHMARK RATE REGULATION

Ever since Congress recognized the need for cable regulation the entire thrust of the legislation and enactment of the legislation was based on **a competitive marketplace.** As well intentioned as Congress was in drafting the Act, there still is to date, not a competitive marketplace for LPTV. Quite to the contrary! There are many discriminatory marketplace forces for LPTV. Program suppliers refuse to deal with LPTV stations. Trade organizations such as the NAB will not allow LPTV stations to become voting members. TV Guide Magazine has a policy of not including the program listings of LPTV stations. NBC and other networks have a policy of not distributing their programming to LPTV stations even in cases when their programming is not being aired by full service stations in the market. Finally, the Cable Act itself, by granting Must Carry to only a few LPTV stations in small out of the way markets and refusing Must Carry for most other LPTV stations has increased the discriminatory marketplace. In our market cable enjoys a 70% penetration. A station which is not carried on cable is deprived of 70% of its market area, a severe economic disadvantage. If LPTV stations were granted the same competitive atmosphere many of these discriminatory practices would stop.

Although not required to, some cable operators may choose to carry a LPTV station. Indeed in the 1992 Act Congress explicitly encouraged cable operators to carry non-qualified LPTV stations. The Benchmark Rates is one vehicle to encourage cable operators to carry non-qualified LPTV stations consistent with the intent of Congress.